



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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May 12, 2009

The Honorable Lisa Jackson, Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

Congratulations on your appointment and on your amazing progress thus far. Indeed, EPA is back on the job, and it is exciting to have a real partner again in the other Washington. We look forward to working with you on climate change, Puget Sound restoration, Hanford cleanup and the other policies and programs we have in common.

Unfortunately, I bring to your attention a difficult challenge. I am requesting your assistance with regard to Region 10's selection of a containment-only remedy for the Wyckoff Superfund Site, located on the shores of Puget Sound. Our fundamental objection is two-fold:

1. EPA selected an incomplete remedy.
2. EPA is attempting to shift the responsibility for rebuilding the remedy to the State.

THE SITE

The Wyckoff Site is located on the shores of Eagle Harbor on Bainbridge Island, approximately 15 miles west of Seattle. Eagle Harbor is an environmentally significant embayment in central Puget Sound. As you well know, restoration of the Puget Sound ecosystem is a goal we share, and while we have made significant progress, difficult challenges like the Wyckoff Site remain for both our agencies.

The Wyckoff Site is a former wood-treatment facility that released creosote-derived toxic chemicals into the adjacent soils, ground water, surface water, and marine sediments. The chemicals released include PAHs, PCP, aromatic carrier oils, and dioxins/furans. EPA estimates that over one million gallons of oily liquid remain in the subsurface beneath the former facility. If left in place, these chemicals will biodegrade very slowly, necessitating active, effective containment for hundreds of years.



STATE CONCERNS

1. **EPA Region 10 selected an Incomplete Remedy.** Region 10 has decided to implement a containment-only remedy as the final remedy for the Wyckoff Site. The remedy consists primarily of hydraulic (pump and treat) and physical (sheet pile wall) containment systems. To remain protective, those systems must remain in place and be actively managed for centuries, much longer than the lifespan of those systems. In particular, the treatment plant will have to be replaced approximately every 30 years and the sheet pile wall approximately every 70 years. As such, both Region 10 and we agree that the remedy will have to be rebuilt numerous times.

The State is concerned about the long-term protectiveness and cost-effectiveness of a containment-only remedy. Our concerns are echoed by our tribal and local partners. We believe that a remedy that begins with active contaminant removal – removal that successfully recovers significant quantities of the chemical mass at the site – followed by the containment system proposed by Region 10 is the best solution.

2. **Region 10's Remedy Proposes to Shift Responsibility for Rebuilding the Remedy to the State.** Not surprisingly, Region 10 expects that the state pay the "operation and maintenance" (O&M) costs at the Wyckoff site. What is surprising is the Region's insistence that repeatedly rebuilding the containment system is part of O&M, and therefore the state's responsibility. We believe that rebuilding components of the containment system is part of remedy implementation and therefore EPA's responsibility.

We believe that shifting to the state the responsibility for rebuilding the containment system is unjust and fundamentally changes the relationship established under CERCLA between EPA and the States, in which:

- EPA builds the remedy (which is a capital cost), and
- The States operate the remedy (which is an operational cost).

Region 10's remedy decision not only reverses that relationship, in terms of who bears the greater responsibility, but makes it inordinately disproportionate. While EPA would build the remedy once (at a cost of around \$40 million), the State would have to repeatedly rebuild the remedy over hundreds of years. These capital costs are in addition to the normal costs of operating the containment systems between rebuilds, which EPA estimates to be \$1 million per year. Altogether, the life cycle cost to the State will likely exceed half a billion dollars.

OUR PROPOSAL

Given the difficult challenges we both face, I propose the following:

1. **Preferred Option:** Complete the containment remedy, but only as an interim action, and work together to seek and fund a more permanent, final remedy that will better protect Puget Sound and citizens of Eagle Harbor.

We believe that a remedy that includes recovery of a large percentage of the chemical mass at the site would be more protective, technically sound and cost effective, and we urge EPA to partner with us and our tribal and local partners in an ongoing review and evaluation of removal technologies.

Our proposal is based on shared responsibility, and we would work cooperatively with EPA to evaluate and test candidate removal technologies. We are also open to cost-sharing approaches to feasibility studies, pilot testing, and remedy implementation. A partnership between our agencies in this effort would be appropriate and appreciated.

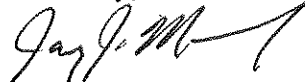
2. **Fallback Option:** If EPA is unable or unwilling to work with us to identify and implement a more permanent and protective remedy, then we believe that EPA should at least share the cost of rebuilding specified components of the containment remedy, namely the treatment plant and containment wall, as follows:

- First rebuild: EPA -- 75%; State -- 25%.
- Second and third rebuilds: 50% each.
- Fourth and subsequent rebuilds: EPA -- 25%; State -- 75%.

We have worked with Region 10 on the Wyckoff Site for over a decade. For the past two years, our respective staffs have worked laboriously on the issue described here but have been unable to reach agreement. Our staff and managers enjoy professional and cooperative relationships, and the Wyckoff Site is no exception. I would like to compliment Tom Eaton, your Washington Operations Office Director, Dan Opalski, who manages the Superfund Unit at Region 10, and Michelle Pirzadeh, your acting Regional Administrator, for their efforts to find a mutually acceptable solution. Unfortunately, success has eluded us, thus prompting this request for assistance.

Thank you very much for your consideration of our proposal. I am hopeful we can reach agreement on this matter. We will contact your office to schedule and coordinate meeting details.

Sincerely,


Jay J. Manning
Director

cc: Congressman Jay Inslee
Michelle Pirzadeh, EPA Region 10 Administrator
Dan Opalski, EPA Region 10 Director of Environmental Cleanup
Tom Eaton, Director, EPA Washington Operations Office